No. 94-1438

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

D. GRANT PEACOCK,

Petitioner,

v.

JACK L. THOMAS,

Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

BRIEF FOR THE PETITIONER

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QUESTIONS PRESENTED

1. Whether a court may create a federal common law ERISA veil-piercing remedy, to impose a judgment entered pursuant to ERISA in a prior lawsuit on a person not made liable by that prior judgment.

2. Whether a federal court may automatically assert "ancillary" jurisdiction over a separate lawsuit, involving separate facts and a new legal theory, filed for the purpose of imposing a prior federal judgment upon a party other than the judgment debtor.

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals, Pet. App. 1a, is reported at 39 F.3d 493. The opinions of the district court are unreported. Pet. App. 30a, 54a.

JURISDICTION

The court of appeals entered its judgment on November 4, 1994. Petitioner timely sought rehearing by the Fourth Circuit, and that request was denied on December 2, 1994. The petition for a writ of certiorari was filed on March 1, 1995, and was granted on May 22, 1995. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 502(a) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a), enumerates the private causes of action available under ERISA. Its text is set forth in the Appendix, *infra*, at 1a.

Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), ERISA's nationwide service of process provision, provides:

> Where an action under this subchapter is brought in a district court of the United States, . . . process may be served in any other district where a defendant resides or may be found.

Article III, Section 2 of the United States Constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; —to all Cases affecting Ambassadors, other public Ministers and Consuls; —to all Cases of admiralty and maritime Jurisdiction; —to Controversies to which the United States shall be a Party; —to Controversies between two or more States; —between a State and Citizens of another State; —between Citizens of different States; —between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

STATEMENT

A. Overview.

Respondent Jack Thomas sued Petitioner Grant Peacock for breach of fiduciary duty under ERISA. Petitioner was exonerated, but a judgment was entered against his co-defendant, Tru-Tech, Inc. ("Tru-Tech"). Unable to collect the judgment from Tru-Tech, respondent then filed this second, independent lawsuit against petitioner to

"Pierc[e] the Corporate Veil Under ERISA and Applicable Federal Law." J.A. 49 (Amended Complaint). In this second suit, respondent sought to impose personal liability on petitioner for the judgment rendered solely against Tru-Tech in the earlier lawsuit, on the basis of acts that took place after entry of that judgment.

At issue in this case are (a) the existence of the federal common law veil-piercing remedy said by the courts below to arise out of ERISA; and (b) the power of a federal court to entertain a separate lawsuit such as this, where there is no independent basis of federal jurisdiction.

This action was begun with a new complaint, a new civil action number, and new service of process; it involved new parties, new factual allegations and new theories of recovery. Its sole link to the prior case and to the federal courts is that it seeks to identify strangers to the prior judgment who may have a responsibility to satisfy that judgment on some legal theory independent of the terms of the judgment itself.

Petitioner argued below that ERISA does not provide for a cause of action to "pierce the corporate veil" in order to collect a judgment entered in a prior lawsuit brought pursuant to ERISA: Respondent's claim did not refer in any way to an ERISA plan or invoke any of ERISA's remedial provisions; its sole connection to ERISA was that it sought to collect a judgment obtained in a lawsuit that invoked ERISA. The district court disagreed, holding that respondent had stated a viable ERISA claim that permitted recovery against petitioner.

The Fourth Circuit affirmed, but with a twist to the analysis. The court of appeals did not simply hold, as did the district court, that respondent had stated a claim under ERISA that would confer federal question jurisdiction. The court instead based federal court jurisdiction here solely on the existence of federal jurisdiction in the prior

action. Despite the absence of any common nucleus of operative fact between the two lawsuits, that court concluded that a federal court has "ancillary jurisdiction" over a separate lawsuit brought for the purpose of imposing a prior federal court judgment on a person other than the judgment debtor from the prior suit.

Notwithstanding its unwillingness to conclude, as respondent urged, that the claim here stated an ERISA cause of action, the Fourth Circuit went on to hold, without reference to any statutory source, that ERISA provides the rule of decision where an attempt is made to pierce the corporate veil to impose an ERISA judgment on a shareholder of a judgment debtor: "we believe that ERISA preempts any state law of veil-piercing." Pet. App. 20a. The court concluded that ERISA does not attach great weight to corporate form, and that a "liberal veil-piercing standard" is appropriate in ERISA actions. *Id.* at 23a.

B. Preliminary Matters: The History of Tru-Tech, Inc. and The Prior Lawsuit.

An understanding of this case requires brief discussion of Tru-Tech, and the judgment against it that respondent seeks to impose on petitioner.

1. Tru-Tech, Inc.

Tru-Tech was organized in 1981 by Bill W. Wilcock, who served as its first President and C.E.O. Tru-Tech had substantial initial capital, obtained from a group of investors that included petitioner. Pet. App. 4a-5a. In the initial stock placement, in 1981, petitioner and Grant Peacock & Co. (a corporation wholly owned by petitioner)[1] together purchased 22% of the voting stock of Tru-Tech. (Trial Transcript reprinted in Fourth Circuit Joint Appendix ("C.A.4 App.") at 145-46.) In addition, petitioner and other shareholders shortly thereafter lent about $350,000 to Tru-Tech, with petitioner putting up $179,760. C.A.4 App. 147.

[1] Grant Peacock & Co. was known for a time as "Peacock, Williams & Co." and is referred to in the opinion below as "PW & C."

Tru-Tech was a legitimate, fully capitalized corporation, whose affairs were conducted with careful regard for corporate formalities.[2] Nevertheless, largely because of external factors identified by the district court, Pet. App. 32a, Tru-Tech's business was a failure. By September 1983, Tru-Tech had lost over $2 million. C.A.4 App. 150.

By mid-1985, Tru-Tech's primary source of revenue was the sale of its own assets. The person in charge of that liquidation was John H. Blackburn, who had succeeded Mr. Wilcock as the President of Tru-Tech. In 1986, Mr. Blackburn was removed from Tru-Tech's payroll (because Tru-Tech had no means of paying him) and placed on that of Grant Peacock & Co. This was done to assure Mr. Blackburn that he would be paid for his services, and thus to ensure that Mr. Blackburn could continue to serve Tru-Tech. Grant Peacock & Co. billed Tru-Tech $10,000 per month for the costs of this arrangement, amounts that Tru-Tech did not pay. Pet. App. 33a. By thus underwriting the efforts toward an orderly winding up of Tru-Tech's affairs, Grant Peacock & Co. incurred costs, including the unpaid bill for Mr. Blackburn's services, of approximately $300,000. C.A.4 App. 160, 203.

2. The Prior Lawsuit.

At issue in *Thomas v. Tru-Tech, Inc.* ("*Tru-Tech*") was Tru-Tech's pension plan for its salaried employees (the "Plan"). In 1981, Tru-Tech's Board of Directors approved creation of the Plan, "subject to the condition

[2] Tru-Tech's Minute Books, which were made defendant's exhibits at the trial of the instant case, show that the Board of Directors was actively involved in the governance of Tru-Tech, and that proper formalities were followed into 1990—long after Tru-Tech had gone into liquidation.

precedent that the Plan shall be approved and qualified by the Internal Revenue Service." J.A. 34.

In fact, the IRS informed Tru-Tech that the Plan in its original form was not acceptable because its ten-year "cliff" vesting schedule was not favorable enough to employees. In response to this notification, and without Board approval or knowledge, Tru-Tech's President, Mr. Wilcock, submitted to the IRS an amendment to the Plan designed to meet the IRS's concerns. J.A. 34.

After Mr. Wilcock's termination, Tru-Tech's Board was informed of the IRS's adverse determination. Unwilling to depart from the cliff vesting schedule, and unaware of the amendment submitted by Mr. Wilcock, the Board resolved in April of 1984 to terminate the Plan and replace it with a profit sharing plan. Subsequently, when Tru-Tech's new Executive Vice President learned of the amendment, he wrote to the IRS, stating that the amendment had not been approved by Tru-Tech's Board and requesting an adverse determination from the IRS. The IRS issued its adverse determination in January of 1985, and the Plan was terminated and its assets refunded to Tru-Tech. J.A. 35.

Tru-Tech was filed in August of 1987 as a class action on behalf of the former salaried employees of Tru-Tech who claimed that the Plan had been improperly terminated and that they were entitled to benefits under the Plan. The class asserted numerous causes of action against a number of defendants, including breach of fiduciary duty under ERISA, against Tru-Tech, petitioner, and Grant Peacock & Co.

The *Tru-Tech* district court issued an order dated November 28, 1988, ruling that the plaintiffs were entitled to benefits, and further holding that Tru-Tech, as a fiduciary of the Pension Plan, was liable for those benefits. Exhibit A to the district court's order set forth a list of the class members and the amounts of their individual

recoveries, which totaled (after opt-outs and a set-off for a settlement by one party) $187,628.93.

The court also expressly held that petitioner was not a fiduciary of the Pension Plan, and that he had no liability. The court found as follows:

> At most, Grant Peacock, as chairman of the board of Tru-Tech, was involved along with the other members of the board of directors in the business decisions relating to the formation and design of the salaried pension plan. These were not fiduciary decisions, but were business decisions relating to the design features of the pension plan. Therefore, I make the following finding of fact:
>
> Neither D. Grant Peacock & Co. [*sic*] nor D. Grant Peacock exercised discretionary authority and control over the management and administration of the plan and the disposition of its assets.

J.A. 24.

The Fourth Circuit affirmed the district court in all respects. This ruling left intact a judgment in favor of the plaintiffs' class against Tru-Tech and the decision that petitioner was not a fiduciary subject to ERISA liability. J.A. 32-42.

In affirming, the court of appeals specifically reinforced the district court's rejection of respondent's attempt to impose liability directly on petitioner:

> [T]he district court held that Peacock acted solely in his capacity as Chairman of the Board of Tru-Tech, not as a fiduciary of the Plan. Indeed, the record reveals that Tru-Tech's Board of Directors resolved in a meeting on October 11, 1984, to retain the ten-year cliff vesting schedule. Conceding this, *Thomas insists that Peacock, as the principal investor, dominated the Board and had de facto power to make these decisions concerning the Plan. But this influence has scant evidentiary support and does not*

contradict the finding that these decisions were made by the Board, not Peacock acting unilaterally.

J.A. 38-39 (emphasis added).

C. The Instant Case.

Unable to collect the judgment against the insolvent Tru-Tech, respondent again sued petitioner in federal court. Without pointing to any particular ERISA cause of action, respondent's amended complaint, filed in 1992, invoked federal authority by relying on "ERISA and Applicable Federal Law," J.A. 49, and respondent served petitioner under ERISA's provision for nationwide service of process, Pet. App. 62a-65a.

1. *Before the District Court.*

In this action, respondent contended that petitioner should be required to pay the judgment against Tru-Tech because, he alleged, petitioner had caused assets of Tru-Tech to be diverted for his own benefit. Toward this end, respondent relied principally on the assignment of certain notes held by Tru-Tech to entities associated with petitioner. Each of the assignments relied on by the district court to pierce Tru-Tech's veil was completely unrelated, both in time and in substance, to the ERISA violation that had been reduced to judgment in *Tru-Tech*, *i.e.*, the company's failure to maintain the Plan. Indeed, each of the assignments occurred after the district court's judgment in *Tru-Tech*. C.A. 4 App. 166-68, 432.[3]

[3] Petitioner showed below that each of the transfers at issue was supported by valid consideration; cash was paid for one note, while the remaining receivables, with a combined face value of less than $60,000, were assigned to Grant Peacock & Co. in partial satisfaction of the debt owed by Tru-Tech to Grant Peacock & Co. for Mr. Blackburn's liquidation services. C.A. 4 App. 168, 191; J.A. 41a. Both lower courts brushed past the question of consideration by noting that Grant Peacock & Co. had for internal accounting purposes written off those amounts owed it by Tru-Tech; this of course does not mean that the money was no longer owed. The lower courts also failed to deal with uncontradicted evidence that the transferred notes were either valueless or worth substantially less than their face amounts. C.A. 4 App. 155-58, 166. It is a small irony of this case that relatively large liability was imposed on petitioner without any reference to the size of any benefit—improper or otherwise—that he received.

Petitioner's primary legal argument in the court below was that ERISA does not provide for a cause of action for "piercing the corporate veil" to impose on a third party a judgment entered in a prior ERISA action. Noting that respondent's Amended Complaint neither invoked any specific remedial provision of ERISA nor made any reference to any element of an ERISA plan, petitioner contended that respondent, as a judgment debtor, was entitled only to available state law remedies to satisfy the judgment.

The district court disagreed, holding that respondent stated an ERISA cause of action.[4] The district court also looked to ERISA for its substantive rule of decision. Relying on the "broad, remedial scope" of ERISA, Pet. App. 50a, the district court concluded that the "congressional intent of ERISA is to hold employers responsible for pension benefits, so that when the corporate form poses a bar to liability, concerns for corporate separateness are secondary to the mandate of ERISA." Pet. App. 44a-45a. Under this relaxed federal common law standard, the court concluded that Tru-Tech's veil could be pierced and the *Tru-Tech* liability imposed on petitioner. Pet. App. 52a-53a.

[4] An important implication of this ruling was the district court's assertion of personal jurisdiction over petitioner; in the face of uncontradicted affidavits showing petitioner had no constitutionally cognizable contacts with South Carolina, the district court nevertheless asserted personal jurisdiction over petitioner on the basis of ERISA's provision for nationwide service of process. Pet. App. 62a-65a.

2. *On Appeal.*

The Fourth Circuit approached the case on a fundamentally different tack from the district court, separating the question of federal subject matter jurisdiction from the existence of a federal common law remedy under ERISA. Accordingly, the court of appeals held that federal subject matter jurisdiction exists even without the existence of a cause of action arising out of ERISA.

The court first observed that there was no basis for federal court jurisdiction "other than the fact that the suit seeks to enforce a judgment obtained pursuant to ERISA." Pet. App. 11a n.6. The court then began its analysis of subject matter jurisdiction, first characterizing the nature of an action to pierce the corporate veil: It "is not simply an attempt to collect a preexisting liability against an entity already found liable under the relevant substantive law; it is, rather, an attempt to impose such a preexisting liability upon an entity *not otherwise liable*." Pet. App. 12a. Thus, the doctrine of piercing the corporate veil is "a substantive rule of liability." *Id.* It "seeks to identify those parties against whom the judgment can be satisfied." *Id.* at 13a. Finally, because "identification of those parties who are liable is necessarily antecedent to procedural enforcement of the judgment against those parties," the court of appeals concluded that it had "ancillary" jurisdiction over "the instant attempt to pierce the corporate veil." *Id.*

The Fourth Circuit acknowledged that its holding appeared to be at odds with *H.C. Cook Co. v. Beecher*, 217 U.S. 497 (1910), which "does make clear that the mere fact that a 'former judgment [provides] the foundation of [a subsequent] case,' is insufficient, alone, to establish that the subsequent case falls within the federal court's ancillary jurisdiction." Pet. App. 15a (citation omitted; quoting *Beecher*, 217 U.S. at 499). The court held, however, that the actual test for the propriety of an assertion of ancillary jurisdiction is whether the subsequent action is "truly independent" of the prior action. The court concluded:

> Without defining the precise contours of when a subsequent litigation is "independent" of a former litigation and judgment, we believe that [respondent] Thomas' attempt to pierce the corporate veil is not "independent" of the initial litigation herein. As noted above, an attempt to pierce the corporate veil is necessarily subsidiary to some primary cause of action. *That Thomas opted to file a separate action to pierce Tru-Tech's corporate veil is irrelevant*: the court's subject matter jurisdiction does not turn on whether Thomas pursued the procedurally proper route. . . . [*T*]*his is, at bottom, a proceeding the goal of which is to collect the judgment earlier obtained by the plaintiff class. There is, in short, simply no practical reason to treat this litigation as separate from the initial litigation.*

Pet. App. 16a-18a (citations and footnotes omitted; emphasis added).[5]

The court then proceeded to fashion an ERISA common law remedy for piercing the corporate veil—this despite having declined to base subject matter jurisdiction directly on the assertion of a cognizable ERISA cause of action. The court concluded that "ERISA preempts any state law of veil-piercing." Pet. App. 20a. It then joined the district court in "adopt[ing a] liberal veil-piercing standard . . . for use in ERISA actions." *Id.* at 23a. The court of appeals thus affirmed the imposition of Tru-Tech's liability on petitioner, stating that ERISA does not "attach great weight to corporate form." *Id.* at 22a.

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[5] The Fourth Circuit did not expressly address petitioner's argument that there could be no personal jurisdiction over him if there was no ERISA cause of action. *See supra* note 4. This issue presumably was one of the "remaining arguments" dismissed by the court as being "without merit." Pet. App. 24a.

SUMMARY OF ARGUMENT

I. By federalizing the law of veil piercing in order to enhance ERISA plaintiffs' ability to find a solvent party to pay an ERISA judgment, the Fourth Circuit has done what the express teachings of this Court and the clear intent of Congress forbid. Given ERISA's comprehensive nature, courts should *not*, as the court of appeals did here, "infer causes of action in the ERISA context." *Mertens v. Hewitt Associates*, 113 S. Ct. 2063, 2071 (1993).

Nor is there any need for a federal common law of ERISA veil piercing. ERISA itself contains a mechanism for reaching beyond the corporate veil. Its definition of "fiduciary" imposes liability without regard to the corporate form. Petitioner was here expressly adjudged not to be a fiduciary; if respondent failed in his attempt to reach beyond the corporate veil to petitioner under the express terms of ERISA, he should not be allowed to do so under a judicial expansion of the statute.

Particularly pertinent here is *Mackey v. Lanier Collection Agency & Service*, 486 U.S. 825, 833 (1988), in which the Court explained that "ERISA does not provide an enforcement mechanism for collecting judgments won" in ERISA cases. If ERISA does not provide for the simple enforcement of ERISA judgments, it surely cannot be held to contain implicitly an even more complex mechanism for the imposition of those judgments on a third party.

The conclusion from *Mackey* that state law provides the forum and the remedy for disputes such as this one is reinforced by this Court's recent pronouncements on the scope of ERISA's preemption provision. Contrary to the Fourth Circuit's holding, ERISA does not preempt the state law of veil piercing. The claim here—that petitioner improperly transferred assets from a corporation previously held liable under ERISA—has no "connection with or reference to" an ERISA plan. *Metropolitan Life*

Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985). Nor would application of state law rules to such a dispute interfere with the goal of a "nationally uniform administration of employee benefit plans." *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 115 S. Ct. 1671, 1678 (1995).

State courts are more than competent to adjudicate this quintessentially state-law matter of whether a corporate veil should be disregarded. While it may be that the appropriate state law remedy would be the avoidance of preferential transfers, rather than veil piercing, since petitioner was not Tru-Tech's alter ego at the time of the ERISA wrong, the fact remains that respondent would have had available state law remedies. There is no need to federalize this realm of the law.

Accordingly, it was error to look to ERISA for the substantive rule of decision, and ERISA cannot supply subject matter jurisdiction in this case.

II. These deficiencies are not remedied by the invocation of the federal courts' "ancillary jurisdiction." The action here is "more than just a continuation or renewal of the [prior] suit, and hence requires its own basis for jurisdiction." *Kokkonen v. Guardian Life Ins. Co.*, 114 S. Ct. 1673, 1676 (1994).

Indeed, this Court has previously held that "an attempt to make [new] defendants answerable for the judgment already obtained" is not "ancillary to the judgment in the former suit." *H.C. Cook Co. v. Beecher*, 217 U.S. at 498-99. *Beecher* controls here and requires reversal.

Beecher's rule is plainly correct. Because the only link between this case and *Tru-Tech* is that respondent's purpose is to obtain payment on the *Tru-Tech* judgment from *someone*, and because this effort is based on post-judgment activities, there is no "common nucleus of operative fact" that would make the two actions part of the same constitutional case. *Owen Equip. & Erec. Co. v. Kroger*, 437 U.S. 365, 371 (1978).

Nor can an effort to find additional parties to pay a judgment that the judgment debtor cannot satisfy be considered necessary "to enable a court to function successfully." *Kokkonen*, 114 S. Ct. at 1676. A search for deeper pockets may be desirable for the *plaintiff* who holds the judgment, but it cannot be called essential to the functioning of the court. Again, the state courts are perfectly suited to this effort. Whatever the extent to which necessity can expand a federal court's Article III jurisdiction, it will not go this far.

The Fourth Circuit's use of ancillary jurisdiction invokes a federal court's inherent power to turn into a federal question a matter Congress chose not to include within ERISA. This circumvents congressional will, and both Article III and prudential limits on jurisdiction. The decision would open the gates to the full panoply of suits over the responsibility of third parties—under a variety of theories—for previously rendered federal court judgments. Neither necessity nor convenience counsels in favor of such a rule; Article III forbids it.

ARGUMENT

I. IT WAS ERROR TO FEDERALIZE THE LAW OF VEIL PIERCING TO IMPOSE LIABILITY FOR PRIOR ERISA JUDGMENTS ON PARTIES NOT MADE LIABLE BY THE TERMS OF ERISA ITSELF.

The decision below erroneonsly expands ERISA to include a federal cause of action to pierce the corporate veil whenever the holder of a judgment entered under ERISA is unable to collect from the ERISA judgment debtor. The court held that "ERISA preempts any state law of veil-piercing," and consequently that the standard for piercing the corporate veil is to be determined by reference to federal common law.[6] ERISA was invoked

[6] Perhaps concerned over its expansive use of ERISA, the Fourth Circuit relied on the doctrine of "ancillary jurisdiction"

below despite the absence from this case of reliance on any remedial provision of ERISA, mention of any provision of any ERISA plan, or even any allegation of an ERISA breach by petitioner. Indeed, petitioner had previously been exonerated on the very wrongs that formed the basis for the ERISA judgment. The decision below is at odds with this Court's teachings regarding the availability of non-statutory remedies under ERISA, ERISA preemption, and the proper judicial approach to implied rights of action and the creation of federal common law generally. ERISA provides neither a cause of action nor a rule of decision in this case.

A. Judicial Creation of a Federal Common Law Rule of ERISA Veil Piercing Is Inconsistent With This Court's Opinions and the Text of ERISA.

1. *"Congress Did Not Intend to Authorize Other Remedies That it Simply Forgot to Incorporate Expressly" into ERISA.*

In *Mertens v. Hewett Associates*, 113 S. Ct. 2063, this Court held that ERISA does not authorize suits for monetary relief by plan participants against a *non*-fiduciary, even one who "knowingly participates" in a breach by a fiduciary. Observing that the only provision of ERISA that could be read to allow suit against nonfiduciaries provides for "equitable relief" only, the Court declined to go beyond the express provisions of ERISA to allow monetary recovery, instead of equitable relief, against a nonfiduciary.

After noting that ERISA is a "comprehensive and reticulated statute," 113 S. Ct. at 2066 (internal quota-

for its subject matter jurisdiction. Given the broad grant of jurisdiction to the federal courts in § 502(e) of ERISA, 29 U.S.C. § 1132(e), however, this reliance seems unnecessary. It would appear that if the court of appeals had been correct that ERISA preempts the state law of veil piercing and provides the substantive rule of decision, subject matter jurisdiction would be provided by ERISA.

tions omitted), this Court stated its "unwillingness to infer causes of action in the ERISA context, since that statute's carefully crafted and detailed enforcement scheme provides strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly." 113 S. Ct. at 2067 (internal quotations omitted). In closing, the Court rejected an invitation to "give a strained interpretation to [ERISA] in order to achieve the [claimed] 'purpose of ERISA to protect plan participants and beneficiaries.'" 113 S. Ct. at 2071. The Court stated that "vague notions of a statute's 'basic purpose' are . . . inadequate to overcome the words of its text," especially with respect to "ERISA, an enormously complex and detailed statute that resolved innumerable disputes between powerful competing interests—not all in favor of potential plaintiffs." *Id.; see also Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987) ("The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA."); *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 146 (1985) ("carefully integrated" enforcement scheme of ERISA is "strong evidence that Congress did *not* intend to authorize other remedies that it simply forgot to incorporate expressly").[7] As this Court observed in rejecting the similar

[7] This principle is not limited to construction of ERISA. This Court has repeatedly held that it will not use federal common law to supplement the remedies chosen by Congress. *See, e.g., Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, 342 U.S. 282, 285-87 (1952); *Northwest Airlines v. Transport Workers Union*, 451 U.S. 77, 97-98 (1981); *Texas Indus. v. Radcliff Materials, Inc.*, 451 U.S. 630, 644-45 (1981). The Court has also noted in other contexts that it proves too much to argue that a judicial remedy must be interposed to vindicate the purpose of a statute: "[N]o legislation pursues its purposes at all costs. Deciding what competing values will or will not be sacrificed to the achievement

"more money" argument that federal common law must be created to serve the federal policy of avoiding depletion of the deposit insurance fund, "there is no federal policy that the fund should always win." *O'Melveny & Myers v. FDIC*, 114 S. Ct. 2048, 2055 (1994).

The courts below did precisely what the Court in *Mertens* said they should not. They found a remedy in ERISA for piercing the corporate veil where Congress supplied none. Indeed, the form of this superadded remedy—an award of money damages against a nonfiduciary—is identical to the remedy rejected by this Court in *Mertens*. 113 S. Ct. at 2068 ("Money damages are, of course, the classic form of *legal* relief.").[8] Under *Mertens*, the courts are not free to attach additional remedies in general, nor this remedy in particular, to ERISA.[9]

of a particular objective is the very essence of legislative choice—and it frustrates rather than effectuates legislative intent simplistically to assume that *whatever* furthers the statute's primary objective must be the law." *Rodriguez v. United States*, 480 U.S. 522, 525-26 (1987) (per curiam); *see Landgraf v. U.S.I. Film Prods.*, 114 S. Ct. 1483, 1508 (1994) ("[s]tatutes are seldom crafted to pursue a single goal, and compromises necessary to their enactment may require adopting means other than those that would most effectively pursue the main goal"); *Central Bank, N.A. v. First Interstate Bank, N.A.*, 114 S. Ct. 1439, 1454 (1994) ("purpose" arguments are insufficient to support expansive interpretation of federal securities laws).

[8] Even if this action could be viewed as seeking equitable relief, it could not be maintained under ERISA. Here, as was the case in *Mertens*, there is no allegation of any violation of ERISA or an ERISA plan that could serve as a basis for invoking ERISA § 502(a)(3), 29 U.S.C. § 1332(a)(3). ERISA "does not, after all, authorize 'appropriate equitable relief' *at large*." *Mertens*, 113 S. Ct. at 2067. It follows from this logic that *Mertens* forbids any sort of relief—monetary or equitable—against nonfiduciaries for engaging in conduct not prohibited by ERISA. *See Reich v. Rowe*, 20 F.3d 25, 30-31 (1st Cir. 1994); *Reich v. Compton*, 1995 WL 329911 at *11-*12 (3d Cir. 1995).

[9] To be sure, ERISA has its "roots in the common law of trusts," *Mertens*, 113 S. Ct. at 2068, and this Court has recognized that

2. *ERISA Already Contains a Standard for Reaching Beyond the Corporation in its Definition of "Fiduciary." A Judicially Created Veil-Piercing Standard Should Not Be Superimposed on the Statutory Standard.*

At the core of *Mertens* is the principle that ERISA is not a work in progress, and judicial additions are not lightly to be made. This principle has particular force where, as here, the statute deals directly with the matter at issue.

ERISA makes provision for reaching beyond the corporation itself, by imposing liability on an individual as a fiduciary whenever he or she "exercises any discretionary authority or discretionary control" with respect to the plan. 29 U.S.C. § 1002(21)(A). As this Court has noted, the definition is couched in functional terms, and it "expand[s] the universe of persons subject to fiduciary duties" beyond the common law boundaries. *Mertens*, 113 S. Ct. at 2071. The corporate form provides no defense to liability as a fiduciary.[10] If a corporate officer or shareholder "exercises discretionary authority or discretionary control" over a plan, then he or she is a fiduciary as that term is

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this common law heritage assists in an understanding of ERISA. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110-11 (1989). The corporate alter ego doctrine, however, is not a part of the common law of trusts, and reliance on the common law of trusts as an aid in interpreting the express provisions of ERISA cannot be stretched to support judicial creation of an extrastatutory veil-piercing remedy.

[10] *See Kayes v. Pacific Lumber Co.*, 51 F.3d 1449, 1459-61 (9th Cir. 1995) (officer of corporate "named fiduciary" can individually be a fiduciary if statute's "functional test" is met); *Dardaganis v. Grace Capital Inc.*, 889 F.2d 1237, 1242-43 (2d Cir. 1989) (President and CEO of corporate fiduciary has personal liability under ERISA where he "exercised complete discretion over the disposition of the Fund assets," and hence was himself a fiduciary; citing 29 C.F.R. § 2510.3-21); *see also Confer v. Custom Eng'g Co.*, 952 F.2d 34, 40 (3d Cir. 1991) (Seitz, J., concurring) (corporate officer individually can be a fiduciary if officer performed "functions enumerated in the statute").

defined by statute, and is subject to the remedies outlined in ERISA.[11] Absent such authority or control—and it must be emphasized that petitioner was adjudged in *Tru-Tech* not to have such authority—the person is not a fiduciary and not liable for fiduciary breach under ERISA.

ERISA's definition of "fiduciary" specifies when one sheltering behind the corporate veil may be forced under the auspices of ERISA to make payments with respect to an ERISA plan.[12] In this sense—that is, whenever sufficient discretionary authority is exercised to render an individual a "fiduciary" under ERISA—there may be instances in which ERISA can be said not to "attach great weight to corporate form." Pet. App. 22a. But the weight that ERISA attaches must be determined by reading ERISA itself; the statutorily granted power to ignore the corporate form in certain circumstances provides no basis for creating a common law rule that the corporate form will be ignored whenever doing so yields a result that the court deems desirable. "[O]nce Congress addresses a subject, . . . the task of the federal courts is to interpret and apply statutory law, not to create common law." *Northwest Airlines*, 451 U.S. at 95 n.34; accord *Mertens*, 113 S. Ct. at 2070 (the "authority of courts to develop a 'fed-

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[11] ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), requires an employee benefit plan to "provide for one or more named fiduciaries." Thus, Congress also specified that there would be at least one accountable entity associated with each plan. This provision rules out a broader judicial search such as the one below, conducted on the basis of the "broad remedial purposes of ERISA," for *some* party to satisfy every ERISA judgment.

[12] *Cf. Reich v. Compton*, 1995 WL 329911 at *6 (declining to pierce the veil of an ERISA party in interest to impose liability on alleged alter ego; "Congress could have easily provided in [ERISA] that an 'alter ego' of a party in interest is also a party in interest, but Congress did not do so").

eral common law' under ERISA is not the authority to revise the text of the statute" (citation omitted)); *City of Milwaukee v. Illinois*, 451 U.S. 304, 314 (1981).

B. State Law Applies to an Action Such as This One. State Courts Provide an Appropriate and Adequate Forum.

1. This Court's Decision in* Mackey, *Establishing That ERISA Does Not Provide a Mechanism for Enforcing ERISA Judgments, Makes it Clear That State Law Applies Here.

In *Mackey v. Lanier Collection Agency & Service*, 486 U.S. 825, 833 (1988), this Court explained that "ERISA does not provide an enforcement mechanism for collecting judgments won" in civil enforcement actions under ERISA's 29 U.S.C. § 1132. "Consequently," the Court concluded, "state-law methods for collecting money judgments must, as a general matter, remain undisturbed by ERISA[.]" 486 U.S. at 834. *Mackey* remits a plaintiff seeking to collect an ERISA judgment to state law remedies.[13]

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[13] To be sure, the facts of *Mackey* are different from those of this case, but the holding of *Mackey* that ERISA does not provide an enforcement mechanism is clear. *Mackey* involved two issues, both of which arose from an attempt by a Georgia collection agency to garnish welfare plan benefits to collect money judgments. In the first portion of its opinion, the Court struck down a Georgia statute that specifically exempted ERISA plans from "the process of garnishment," on the grounds that the law made "reference to" an ERISA plan and thus was preempted by ERISA. 486 U.S. at 828-30.

The second portion of the opinion went on to consider whether the entire Georgia garnishment procedure was preempted by ERISA. In this context, the Court concluded that ERISA does not provide its own mechanism for the enforcement of judgments: hence, the Court held that state law mechanisms must be used and that the garnishment statute was not preempted. 486 U.S. at 830-40. Plainly, if ERISA did contain a general enforcement mechanism for judgments relating to ERISA plans, akin to what respondent sought to initiate in the instant case, the Court would have reached a different result.

This case goes beyond a simple enforcement action. It introduced a new theory of liability, and required a new trial on new facts, to impose the *Tru-Tech* judgment on one not a party to the judgment. As the court below stated in discussing *Mackey*, it "would be error . . . to characterize the doctrine of piercing the corporate veil as a mere judgment enforcement mechanism." Pet. App. 20a. We submit, however, that the Fourth Circuit missed the implication of its own observation. If, under *Mackey*, ERISA does not provide a mechanism even for the simple enforcement of ERISA judgments, it follows *a fortiori* that ERISA cannot be found to contain implicitly a broader mechanism for proceedings that invoke new legal theories and new facts in order to *expand and alter*, and not just enforce, ERISA judgments.

2. General Principles of ERISA Preemption Established by This Court Show That This Case Does Not "Relate to" an ERISA Plan.

ERISA contains an express preemption provision, Section 514(a), 29 U.S.C. § 1144(a), which sweeps from the field "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. The breadth of this preemption clause provides a direct measure of Congress' intent to substitute ERISA causes of action for state law; if an area is not preempted by ERISA, it follows that the state law cause of action and rule of decision remain unaffected. *See Cipollone v. Liggett Group, Inc.*, 112 S. Ct. 2608, 2618 (1992) ("Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted"); *Cf. Mackey*, 486 U.S. at 834 (because ERISA does not provide for collection of judgments, it follows that state-law collection methods are not pre-empted).

Without any analysis of the cases defining the scope of ERISA preemption, the Fourth Circuit held that, "[b]ecause a rule of veil-piercing determines *who* is liable for breaches of ERISA fiduciary duties, we believe that ERISA preempts any state law of veil-piercing." Pet. App. 20a. To the contrary, it is plain under this Court's cases that ERISA does not preempt a state law action to pierce the veil of a corporation that has previously had an ERISA judgment entered against it. ERISA's failure to preempt this area buttresses the conclusion that there is no justification for creating an ERISA cause of action.

This Court has observed on several occasions that the phrase "relate to" in Section 514(a) is given "its broad common-sense meaning, such that a state law 'relate[s] to' a benefit plan 'in the normal sense of the phrase, if it has a connection with or reference to such a plan.'" *Metropolitan Life*, 471 U.S. at 739 (quoting *Shaw v. Delta Air Lines*, 463 U.S. 85, 97 (1983)).

Even applying "common sense" at its broadest, however, the state law of veil piercing as it would apply in this case cannot be said to "relate to" any ERISA plan "in the normal sense of the phrase." There was no "reference to" or "connection with" ERISA or an ERISA plan in this case. The Plan that was the subject of *Tru-Tech* is long gone and the obligations thereunder adjudicated and reduced to judgment; the respondent's case here does not turn at all on any reliance on or parsing of the Tru-Tech Plan or any specific provision of ERISA.[14] Indeed, the

[14] This is made clear by contrast with cases finding preemption, such as *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990). There, a state action for wrongful discharge to avoid paying pension benefits was held preempted because the existence and terms of the plan were "critical" to establishing liability in the state claim. 498 U.S. at 140. Moreover, preemption was also required because the state claim "conflict[ed] directly with an ERISA cause of action." 498 U.S. at 142; *see also FMC Corp. v. Holliday*, 498 U.S. 52, 59-60 (1990) (state statute preempted where it both refers directly to benefit plans and subjects "plan administrators to conflicting state regulations").

Amended Complaint invokes no specific provision of ERISA, and alleges no violation of the Plan. The absence of any connection with or reference to ERISA highlights the error of creating an ERISA rule of decision to govern this case.

The inapplicability of ERISA preemption here, and hence the need to look to state law for the rule of decision, is highlighted by this Court's recent exegesis of the proper scope of ERISA preemption. In *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 115 S. Ct. 1671, 1677 (1995), the Court considered whether a New York state law imposing surcharges on hospital patients covered by commercial insurers was preempted by ERISA to the extent that it imposed surcharges on patients whose health insurance was purchased by plans governed by ERISA. In analyzing this matter, the Court stated the "starting presumption that Congress does not intend to supplant state law," 115 S. Ct. at 1676, and emphasized that the question of preemption turns on congressional intent, *id.* at 1677. Concluding that the statutory term "relate to" is unhelpfully vague, the Court turned to legislative history to conclude that in enacting ERISA's preemption provision, Congress intended

> to ensure that plans and plan sponsors would be subject to a uniform body of benefits law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government . . ., [and to prevent] the potential for conflict in substantive law . . . requiring the tailoring of plans and employer conduct to the peculiarities of the law of each jurisdiction.

Id. (quoting *Ingersoll-Rand*, 498 U.S. at 142). The goal of a "nationally uniform administration of employee bene-

fit plans," 115 S. Ct. at 1678, was held not to be impeded by a statute imposing only an "indirect economic influence" on plan decisions, but which did "not bind administrators to any particular choice and thus function as a regulation of an ERISA plan itself." 115 S. Ct. at 1679. The state statutes in question were accordingly held not to be preempted.

The case against preemption is even stronger in the instant case. It would be sheer fancy to assume that the prospect of facing state veil-piercing standards, rather than a federal common law standard, would exert even "indirect economic influence" over plan administration decisions; it certainly will not "bind plan administrators to any particular choice" in directing their plans, or require the "tailoring of plans" on a state-by-state basis.[15] Allowing the states to maintain their traditional standards for veil piercing would do nothing to undermine a "uniform body of benefits law."

In sum, ERISA does not preempt state veil-piercing law. It follows that suits such as this one are not governed by ERISA. *See O'Melveny & Myers*, 114 S. Ct. at 2054 ("matters left unaddressed in [a comprehensive and detailed regulatory] scheme are presumably left subject to the disposition provided by state law"); *Wallis v. Pan American Petroleum Corp.*, 384 U.S. 63, 70 (1966) ("[e]ven where there is related federal legislation in an area, as is true in this instance, it must be remembered that Congress acts . . . against the background of the total *corpus juris* of the states").

[15] This absence of any impact on the plan in question serves to allay the concerns expressed by the dissenting Justices in *Mackey*. In the dissent's view, "state garnishment laws necessarily relate to employee benefit plans to the extent they require such plans to act as garnishees, which is a substantial and onerous obligation." 486 U.S. at 842 (Kennedy, J., dissenting). There is no comparable burden in a veil-piercing case. Its very point is to reach beyond the plan, and beyond those adjudged to be its fiduciaries, to some even more remote party. The plan is not burdened by such a suit, and would typically not even be a party.

3. *Piercing of the Corporate Veil Is a Matter Traditionally Committed to the States, Which Are Competent to Adjudicate Such Issues.*

Corporate law in general and the standards for piercing the corporate veil in particular are quintessential matters of state law. Accordingly, the strong presumption is that state law should govern here. *See Patterson v. McLean Credit Union*, 491 U.S. 164, 183 (1989) ("as a rule we should be and are reluctant to federalize matters traditionally covered by state common law" (internal quotation omitted)).

Mackey and *New York State Conference* show that there is no reason to depart from this presumption where, as here, the exposure of ERISA plans to state law regimes will do nothing to thwart the goal of "a uniform body of benefits law." *New York State Conf.*, 115 S. Ct. at 1677. This is consistent with the general presumption that state law, and not federal law, will provide the rule of decision in a matter not addressed by federal statute. *See generally O'Melveny*, 114 S. Ct. at 2055 (improper to create federal common law except when there is a "significant conflict" between state law and "an identifiable federal policy or interest"); *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 728-29 (1979) (identifying factors for analysis in considering whether presumption in favor of applying state law has been overcome, and applying state corporate law under federal statute); *City of Milwaukee*, 451 U.S. at 312-13 ("[f]ederal courts, unlike state courts, are not general common-law courts and do not possess a general power to develop and apply their own rules of decision"); *cf. Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 98-99 (1991) (where federal law is silent, state law typically supplies the applicable rule of decision).

Application of the relaxed federal common law standard for piercing the corporate veil adopted below would upset

the settled commercial expectations of those who availed themselves of the corporate form with the understanding that state law would govern the circumstances under which the general rule of limited liability would be abrogated.[16] *See Kimbell Foods*, 440 U.S. at 739 & n.42 (noting that it thwarts legitimate expectations when special federal laws trump established commercial rules). It would also have the anomalous effect of granting a preference to creditors holding an ERISA judgment, since they may be able to collect from the alter ego under the relaxed standard when other creditors cannot.

Of course, if state law supplies the rule of decision, there is no basis for trying the case in federal court at all—particularly in a situation such as this one, where there is no related matter pending in federal court and no gain in efficiency. State courts deal on a daily basis with

[16] The standard adopted below is noteworthy not only because it adopts a "liberal veil-piercing standard." Pet. App. 23a. It also departs from the typical common law rule, and settled expectations, by imposing alter ego liability on a party who was *not* the corporate alter ego at the time of the wrong for which liability is being imposed. Even if one assumes *arguendo* that petitioner became Tru-Tech's alter ego by virtue of the transfers alleged in this case, it is clear that the finding in *Tru-Tech* that petitioner was not a fiduciary means that he was not Tru-Tech's alter ego at the time of the ERISA breach. If he had been Tru-Tech's alter ego at that time, he would have had the kind of control or authority over the Plan that would have made him a fiduciary.

By thus imposing liability on petitioner for a corporate wrong that occurred before he became the alter ego of the corporation, the court below established a federal common law principle at variance with the general law of corporate veil piercing. *See 1 Fletcher Cyclopedia Corporations* § 41.10 (Perm. ed. 1990) (by piercing the corporate veil, "the court merely disregards the corporate entity and holds the individual responsible *for his or her acts knowingly and intentionally* done in the name of the corporation"; existence of a corporate entity will be disregarded when "the corporate entity *as to this transaction had at the time* no separate mind, will or existence of its own," and the alter ego's control "*proximately cause*[*d*] *the injury*" (emphasis added)).

questions of the permeability of the corporate veil, and there is no reason to doubt their competence in such areas. *See Kokkonen*, 114 S. Ct. at 1677 (enforcement of agreement settling federal case "is for state courts, unless there is some independent basis for federal jurisdiction"). Our argument is not that there should be no remedy for improper transfers out of a financially ailing ERISA fiduciary. The remedy, however, is provided by state law, in state court, for improper transfers out of any financially ailing corporation; the mere fact that the corporation was an ERISA fiduciary is no basis for federalizing the issue.[17]

Finally, as a practical matter, federalizing the law of veil piercing would be unlikely to yield any greater uniformity than the simple application of state law principles of alter ego or preferential transfers. The rules of the various states with respect to these fundamental common law principles are likely to resemble one another at least as much as the free-hand creations of disparate jurists striving to model new federal common law doctrines to fit their individual perceptions of the needs of ERISA in a particular case. *See City of Milwaukee*, 451 U.S. at 325 ("any judicial approach applying federal common law" will be "ad hoc" and "sporadic"); *O'Melveny*, 114 S. Ct. at 2055 (observing "the runaway tendencies" of "untethered" federal common law). Pension fund managers would find greater predictability in a clear rule that settled state law would govern

[17] *See* J.A. 48 (plea in respondent's Complaint for state law relief in this case). It should be noted that the applicable state law remedy may not be a rule of veil piercing. The typical remedy for improper transfers out of an insolvent corporation is rescission of the offending transfers. *See Hickman v. Hyzer*, 401 S.E.2d 738, 740 (Ga. 1991) (An action against directors to recover sums improperly paid out by an insolvent corporation "does not pierce the corporate veil. Instead, it simply rescinds improper payments to shareholders or directors so that funds are available for the payment of corporate debts."). Assuming some or all of the transfers in this case were improper, the remedy would be restitution to the corporation by petitioner of the value of those transfers, not general assumption of all of Tru-Tech's liabilities.

the alter ego determination than in a welter of evolving federal positions.

In summary, by federalizing and liberalizing the doctrine of veil piercing, the court of appeals would free federal courts to impose ERISA liability on corporate officers and shareholders whenever such a result is deemed consistent with the policy of ensuring full collection of all ERISA judgments. Not only is this doctrine without support in the text of ERISA; it flies in the face of this Court's teachings in *Mertens*. Congress has fully specified, through ERISA's definition of fiduciary, the circumstances in which such liability is proper. That test has already been applied to petitioner in *Tru-Tech*. The maintenance of a second ERISA suit against him was improper and should be reversed. If state law provides to respondent a remedy outside of ERISA, that remedy is properly pursued in state court.

II. A FEDERAL COURT DOES NOT HAVE ANCILLARY JURISDICTION OVER A SECOND LAWSUIT, SHARING NO COMMON NUCLEUS OF OPERATIVE FACT WITH THE FIRST LAWSUIT, BROUGHT SOLELY TO EXPAND THE JUDGMENT FROM THE FIRST LAWSUIT TO INCLUDE A THIRD PARTY.

It appears that the panel below had some trepidation over creating from whole cloth an ERISA cause of action for "piercing the corporate veil," for its opinion relies for subject matter jurisdiction, not on ERISA's general grant of jurisdiction over cases arising under ERISA, 29 U.S.C. § 1132(e)(1), but on the proposition that this lawsuit is "ancillary" to *Tru-Tech*.[18] The court of appeals' use of

[18] If this Court concludes that ERISA does not provide a cause of action for piercing the corporate veil, the judgment below must be reversed regardless of whether or not ancillary jurisdiction might be available in circumstances like this. Before the district court, petitioner submitted uncontradicted affidavits showing that he did not have contacts with South Carolina sufficient to justify personal jurisdiction over him. The district court ignored petitioner's lack of contacts with South Carolina, reasoning that ERISA's provision for nationwide service of process, 29 U.S.C. § 1132(e)(2), meant that personal jurisdiction could be asserted over petitioner as long as he had minimum contacts with the United States as a whole. Pet. App. 62a-65a.

The Fourth Circuit was silent on this matter, although it was raised below. That court's reliance on ancillary jurisdiction for subject matter jurisdiction does not settle the question of personal jurisdiction, however. If this is not an ERISA case, ERISA's nationwide service of process provision cannot apply, and petitioner cannot be haled into court in South Carolina.

ancillary jurisdiction is directly contrary to this Court's decision in *H.C. Cook Co. v. Beecher*, 217 U.S. 497, which is exactly on point, and to this Court's recent decision in *Kokkonen v. Guardian Life Insurance Co.*, 114 S. Ct. 1673.

A. Under This Court's Decision in *Beecher*, Ancillary Jurisdiction Is Unavailable.

This Court has emphasized that in determining whether ancillary jurisdiction is available, "the context . . . is crucial." *Owen*, 437 U.S. at 376. The context of this action is an attempt to impose an existing judgment on a *new* party through a *new* action asserting a *new* claim on the basis of *new* facts. This Court has addressed exactly this context in *Beecher* and held that there is no ancillary jurisdiction.

In *Beecher*, the plaintiff company had obtained a judgment against a rival corporation for infringement of a patent. The judgment was uncollectible, allegedly as a result of actions taken by the directors of the corporate judgment debtor, actions that would enrich the directors and that would ensure that the defendant company would be insolvent in the event of a judgment against it in the initial suit. Subsequent to the judgment against the corporation, the plaintiff brought a separate action against those directors, which Justice Holmes characterized for

the unanimous Court as "an attempt to make the defendants answerable for the judgment already obtained." 217 U.S. at 498. Emphasizing that the complaint instituting the second action did not deal with the patent, while setting forth the existence of the prior judgment in detail, the Court ruled that the attempt to impose liability on the directors was "of course" not "ancillary to the judgment in the former suit." 217 U.S. at 499.[19] "[I]f the directors are under obligations by Connecticut law to pay a judgment against their corporation, that is not a matter" conferring federal court jurisdiction. *Id.*

Beecher is plainly controlling here. This case, like *Beecher*, is an attempt (i) in a second, separate lawsuit (ii) to invoke a claim and facts not in issue in the prior lawsuit (iii) in order to hold liable for a prior federal judgment (iv) a person not adjudged liable in that lawsuit and not already within the federal court's jurisdiction.[20] Because the second action was held not to be ancillary in *Beecher*, the second action here cannot be ancillary.

The distinction of *Beecher* offered by the court below is not persuasive. The court sought to distinguish *Beecher* on the timing of the alleged wrongs by the individual defendants in the two cases. It contrasted petitioner's alleged purpose of "evading the already-extent [*sic*] judgment against Tru-Tech" with the *Beecher* defendants' actions, taken while that suit was still pending. 39 F.3d at

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[19] The opinion of the court of appeals in *Beecher* aptly describes the situation in this case. It characterized the attempt to force the directors of the insolvent judgment debtor to pay the judgment as "new matter, . . . growing out of the relationship between the corporation and its directors, [which] is in no sense of the word a patent case. . . . Neither the validity of the patent nor its infringement is put in issue by the complaint." *H.C. Cook Co. v. Beecher*, 172 F. 166, 167 (C.C.D. Conn. 1909). Similarly, neither ERISA nor the ERISA plan is at issue in this case.

[20] *See infra* note 29.

501.[21] This distinction, however, furthers the argument against ancillary jurisdiction here. It serves only to emphasize that petitioner's asserted wrongdoing was entirely divorced in time from the ERISA wrong for which Tru-Tech was held liable, thus highlighting the absence of any factual interconnection between *Tru-Tech* and the instant case. Ancillary jurisdiction is even *less* appropriate here than in *Beecher*.[22]

Beecher is correct and controlling. It dictates reversal.

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[21] The court of appeals also seems to suggest that petitioner was more culpable than the *Beecher* defendants, by characterizing the actions of the *Beecher* defendants as "acting within their legal capacity," but this peek at the merits can hardly have an influence on the availability of ancillary jurisdiction.

[22] Several recent federal court decisions have agreed with *Beecher* that ancillary jurisdiction is unavailable in circumstances like this. *See Sandlin v. Corporate Interiors, Inc.*, 972 F.2d 1212, 1216 (10th Cir. 1992) (rejecting attempt by a successful plaintiff to enforce his judgment against alleged alter egos of the judgment debtor, the court stated that "[w]hen a party asserts a post-judgment claim against a nonparty not arising out of the operative facts that produced the original judgment, an independent basis for federal jurisdiction must exist"); *National Westminster Bank U.S.A. v. Cheng*, 751 F. Supp. 1158, 1160 (S.D.N.Y. 1990) (declining ancillary jurisdiction in separately filed lawsuit, because there was no nexus between the original claim and the veil-piercing action, and relying on *Manway Construction Co. v. Housing Auth.*, 711 F.2d 501, 504 (2d Cir. 1983); "petitioner's theories of fraudulent conveyance and piercing the corporate veil are removed from the original breach of contract action . . . . [p]etitioner's claims involve investigation into the facts of how the corporations at issue were run . . ."); *Berry v. McLemore*, 795 F.2d 452, 455 (5th Cir. 1986) (refusing to exercise ancillary jurisdiction over an attempt to collect a judgment from the alleged indemnitors of the judgment debtor, where a "*new and independent action*" was filed to enforce "alleged obligations . . . [that] are completely independent of the primary judgment" sought to be enforced); *see also* cases cited *infra* note 30.

B. This Case Does Not Fall Within the Established Categories of Ancillary Jurisdiction Recognized by This Court.

In *Kokkonen*, this Court provided a taxonomy of ancillary jurisdiction: the doctrine has been used (i) to allow unified disposition of claims that are factually interdependent, and (ii) to provide necessary protection of a court's ability to function successfully. 114 S. Ct. at 1676. Each of these species of ancillary jurisdiction has a constitutional as well as a prudential dimension.

The federal courts are courts of limited jurisdiction, empowered to entertain cases only where there is both constitutional and congressional authorization. *Kokkonen*, 114 S. Ct. at 1675; *Owen*, 437 U.S. at 371-73. Article III, Section 2 of the Constitution defines the limit of federal judicial power. It extends that power to, among other controversies, "all Cases . . . arising under . . . the Laws of the United States." Until the proponent of jurisdiction establishes a basis for jurisdiction, "[i]t is to be presumed that a cause lies outside this limited jurisdiction." *Kokkonen*, 114 S. Ct. at 1675.

The Fourth Circuit reversed this presumption, concluding that there was "simply no practical reason to treat this litigation as separate from the initial litigation." Pet. App. 17a-18a. The court reached this conclusion without expressly considering whether this case and *Tru-Tech* were a part of the same constitutional case or controversy.[23] After recognizing that the only basis for federal jurisdiction was "the fact that the suit seeks to enforce a judgment obtained pursuant to ERISA," Pet. App. 11a n.6, the court inquired into whether this case and *Tru-Tech* were "truly 'independent.'" *Id.* at 15a. Relying on the

[23] This Court has treated the terms "case" and "controversy" as essentially coterminous. *See Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239 (1937) ("The term 'controversies,' if distinguishable at all from 'cases,' is so in that it is less comprehensive than the latter, and includes only suits of a civil nature.").

proposition that "an attempt to pierce the corporate veil is necessarily subsidiary to some primary cause of action," *id.* at 16a, the court reached the somewhat circular conclusion that since this action must be subsidiary to *something*, and that something must be *Tru-Tech*, it followed that *Tru-Tech* conferred ancillary jurisdiction over this case.

In fact, this case does not fall under either head of ancillary jurisdiction identified in *Kokkonen*. There is no factual interdependence between this lawsuit and *Tru-Tech*, and no judicial or administrative imperative dictates that this action be tried in a federal court.

1. *This Case and* Tru-Tech *Share No Common Nucleus of Operative Fact.*

The first type of ancillary jurisdiction identified by *Kokkonen*, that exercised when the primary and ancillary matters are factually interdependent, corresponds to the primary test enunciated by this Court for determining when two matters are part of the same constitutional case or controversy. It asks whether the ancillary matter and the primary matter already before the court share a common nucleus of operative fact. *See Owen*, 437 U.S. at 371 (it is "apparent" that the common nucleus test set forth in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966) "delineated the constitutional limits of federal judicial power").

This test also contains a prudential element. If there is no factual overlap between the two cases, there is no efficiency in bringing the second matter into federal court. As was the case here, the federal court will do exactly what a state court faced with the same case would do. It will conduct a full trial. The putatively ancillary case cannot be decided on the basis of the record in the prior action.

It is readily apparent in this case, as it was in *Kokkonen*, that there is no factual connection between the pri-

mary case and the putatively ancillary one. Liability in *Tru-Tech* was premised on decisions regarding the maintenance and dismantling of the Plan. These decisions were made sporadically between 1981 and 1985, and suit was brought in 1987. The alleged wrongs here, by contrast, were subsequent transfers of assets held by Tru-Tech that respondent claims should have been available to satisfy the *Tru-Tech* judgment. There is no common nucleus of fact here.

Indeed, although the Fourth Circuit never expressly conducted a common nucleus inquiry (or any other constitutional analysis), the court acknowledged several times in its opinion that there is, beyond the judgment itself, no factual nexus between this case and *Tru-Tech*.[24] The facts underlying the two claims "have nothing to do with each other; it would neither be necessary nor even particularly efficient that they be adjudicated together." *Kokkonen*, 114 S. Ct. at 1676. Ancillary jurisdiction cannot rest in this case on factual interdependence with *Tru-Tech*.

2. *This Separate Lawsuit Cannot Be Maintained on the Premise That It Was Necessary to "Enforce" the Prior Judgment.*

This leaves, as in *Kokkonen*, the question of whether the second type of ancillary jurisdiction—which we call here for purposes of reference "necessary" ancillary ju-

[24] *See* Pet. App. 15a (distinguishing *Beecher* because alleged wrongs here were directed to "already-extent [*sic*] judgment"); *id.* at 16a (presumably on same basis, acknowledging that "Thomas may not have been able to pursue this litigation at the same time as the initial litigation"); *id.* at 17a n.10, (this case involves "conduct by Peacock occurring after the judgment in the initial litigation"); *id.* n.11 (respondent could not have pursued his veil-piercing claim in *Tru-Tech* "because most of the actions which led the district court to its conclusion had then yet to occur"); *id.* at 19a n.14, (activity leading to conclusion of veil piercing here occurred "*after* the activity pursuant to which the corporation is deemed to have breached its ERISA fiduciary duties"); *see also id.* at 11a n.6.

risdiction—can be asserted. This is ancillary jurisdiction "to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Kokkonen*, 114 S. Ct. at 1676.

It bears emphasis that the doctrine of ancillary jurisdiction, by its very nature, is applied for the purpose of extending the reach of a federal court's jurisdiction; accordingly, the doctrine's use must be subjected to searching Article III scrutiny. *See The Steamer St. Lawrence*, 66 U.S. (1 Black) 522, 526 (1862) ("there is a wide difference between the power of the court upon a question of jurisdiction and its authority over its mode of proceeding and process"). The Fourth Circuit did not engage in such careful constitutional scrutiny.

In support of its invocation of ancillary jurisdiction, the Fourth Circuit invoked *Riggs v. Johnson County*, 73 U.S. (6 Wall.) 166 (1868). The Fourth Circuit did not analyze the facts of *Riggs* or its actual holding.[25] Instead, the Fourth Circuit relied exclusively on the following passage from *Riggs*:

> [T]he jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until that judgment shall be satisfied. . . . Process subsequent

[25] The holding of *Riggs* is inapposite. In *Riggs*, a bondholder had obtained a judgment against the county that issued the bonds. When a state court issued an injunction against the levying of the tax necessary to pay the bonds (and the judgment), the plaintiff returned to federal court for a writ of mandamus directing the levying of the tax. Thus, *Riggs* did not impose liability on a stranger to the judgment. Rather, it directed compliance with the court's order by the party with the authority to render that compliance. The Court characterized the use of the writ of mandamus as "a substitute for the ordinary process of execution to enforce the payment" of a judgment. 73 U.S. at 198.

The Fourth Circuit improperly elevated the expansive language of the *Riggs* dictum above the *Beecher* holding. With respect to ancillary jurisdiction, "[i]t is to the holdings of our cases, rather than their dicta, that we must attend." *Kokkonen*, 114 S. Ct. at 1676.

> to judgment is as *essential to jurisdiction* as process antecedent to judgment, *else the judicial power would be incomplete and entirely inadequate* to the purposes for which it was conferred by the Constitution.

73 U.S. (6 Wall.) at 187 (emphasis added).

The limiting principle on the *Riggs* dictum is that ancillary jurisdiction must be "essential" to avoid rendering the judicial power "incomplete and entirely inadequate." *See also Kokkonen*, 114 S. Ct. at 1677 (no ancillary jurisdiction where not "essential to the conduct of federal-court business"); *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 801 (1987) (the rationale for court's inherent authority to appoint a private prosecutor "is necessity"); *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 764 (1980) (because "inherent powers are shielded from direct democratic controls, they must be exercised with restraint and discretion"); *United States v. Hudson & Goodwin*, 11 U.S. (7 Cranch) 32, 34 (1812) (federal court's inherent powers are those which "are necessary to the exercise of all others").

This limitation to matters that are *necessary* to the court's functioning is the mechanism that prevents an assertion of ancillary jurisdiction from straying beyond a single constitutional "case," as is required by Article III.[26] When dealing with the doctrine of necessary ancillary jurisdiction, of course, the familiar common-nucleus test for determining what constitutes a single constitutional case cannot be applied. Matters over which necessary

[26] As the Fourth Circuit has elsewhere noted, with respect to the "inherent power" of courts, "[w]hile this principle is sound under appropriate circumstances, it is not a principle of *federal* jurisdiction. . . . In our view, the inherent power of a district court to enforce settlement agreements, like any other power inherently vested in a federal court, presupposes the existence of federal jurisdiction over the case or controversy." *Fairfax Countywide Citizens Ass'n v. Fairfax County*, 571 F.2d 1299, 1304 (4th Cir. 1978).

ancillary jurisdiction has been asserted, such as contempt, sanctions for misconduct, and attorney's fee awards, *see, e.g.*, cases cited in *Kokkonen*, 114 S. Ct. at 1676, typically do not share a factual nexus with the substantive claims in the primary proceeding. A contempt proceeding in an antitrust action, for instance, may deal with the contumely directed to the court by counsel but never touch on tying arrangements. What the two proceedings do share in such a circumstance is that they arise within the same lawsuit—that is, the same filed "case"—and resolution of the ancillary matter is essential to protect the integrity of that case.[27] *See Willy v. Coastal Corp.*, 503 U.S. 131, 138 (1992) ("determination of a collateral issue" such as Rule 11 sanction "implicates no constitutional concern" because it is not an adjudication of the merits of a separate claim); *Curry v. Del Priore*, 941 F.2d 730, 731 (9th Cir. 1991) ("Ancillary jurisdiction permits courts to adjudicate matters that arise during the course of an action and affect the court's ability either to render an efficacious judgment or to control the litigation before it.").

Thus, any exercise of ancillary jurisdiction that does not rely on a common nucleus of operative fact must be *necessary* to the court's function in adjudicating a given case. It cannot be enough that respondent holds a judgment that was entered by a federal court. As Judge Posner has observed, the federal courts should not use "so formless a concept as inherent power to give the federal courts

[27] It makes sense that the bounds of "necessary" ancillary jurisdiction would correspond to the boundaries of a given lawsuit. Courts function with respect to particular and discrete filed *cases*. Any concern over an impediment to the court's ability to function will thus arise within the context of such a filed case; any irritant to the court that does not arise in such a context by definition will not impair the court in its core business, and is therefore too far afield to fall within the constitutional limits on ancillary jurisdiction.

an indefinite jurisdiction over disputes in which the federal interest may be nonexistent." *McCall-Bey v. Franzen*, 777 F.2d 1178, 1187 (7th Cir. 1985).[28]

Federal court jurisdiction is not necessary here. This case does not fall among those in which ancillary jurisdiction is asserted over matters—such as contempt, sanctions, or attorney's fees—related to the conduct of trial in federal court. The *Tru-Tech* proceedings were long finished before the acts complained of here occurred.

Nor, as *Kokkonen* makes clear, can ancillary jurisdiction be justified here on the premise that this new action is necessary to enforce the *Tru-Tech* judgment. The judgment in *Tru-Tech* was that the plaintiffs should collect money from Tru-Tech—and *not* from petitioner. This proceeding does not seek to enforce or vindicate that order. It effectively seeks to overturn it, with a new claim and a

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[28] 28 U.S.C. § 1367, which codifies elements of the doctrine of ancillary jurisdiction under the head of "supplemental jurisdiction," does not apply to this case. First, § 1367 applies only to actions commenced "on or after the date of the enactment of [the Judicial Improvements Act of 1990]," which was December 1, 1990. Pub. L. 101-650, Sec. 310. *Tru-Tech*, the only civil action to which this case could be "supplemental," was commenced well before this December 1, 1990 effective date. *See Sandlin*, 972 F.2d at 1215 n.3. Moreover, the language of § 1367 makes plain that it serves only to supplement jurisdiction in a case currently pending, not to provide jurisdiction over an entirely new case. *See* 28 U.S.C. § 1367 ("*in any civil action* of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction . . ." (emphasis added)). The statute does not apply to a circumstance like this one.

Even if § 1367 did apply here, the result would not change. The purpose of § 1367 was to extend the availability of the statutorily defined "supplemental jurisdiction" to Article III's case or controversy limit. *See* H.R. Rep. No. 101-734, 1990 U.S.C.C.A.N. 6860, 6874. Because the exercise of ancillary jurisdiction below exceeds the bounds of Article III, the result is the same here whether or not § 1367 applies.

new substantive remedy against a person expressly absolved of liability.[29] Such an enterprise amounts to a new case.

In *Kokkonen*, as here, the action did not seek to enforce the express terms of the district court's order, but to expand those terms to include additional matter. Accordingly, the Court held that ancillary jurisdiction was not available because it was not "essential to the conduct of federal-court business." 114 S. Ct. at 1677. *Kokkonen* holds that federal jurisdiction could be had only if the terms of the settlement were made a part of the order; in other words, before ancillary jurisdiction becomes available, the alleged wrong must be a divergence from the terms of the court order. *Root v. Woolworth*, 150 U.S. 401, 410-11 (1893) (court has jurisdiction "to carry into effect its own orders . . . *when the subject-matter and the parties are the same in both proceedings*"; this jurisdiction exists "to avoid the *relitigation* of questions once settled between the same parties" (emphasis added)); *Dugas v. American Surety Co.*, 330 U.S. 414, 428 (1937) (availability of jurisdiction over bill to enforce prior decree is "subject to the qualification that the relief be not of a different kind or on a different principle"); *Riverdale Cotton Mills v. Alabama & Georgia Mfg. Co.*, 198 U.S. 188, 195 (1905) (federal court has ancillary jurisdiction to protect "title which it has decreed as against every one a party to the original suit and prevent that party from relitigating the questions of right which have already been determined"); *see also Lucille v. City of Chicago*, 31 F.3d 546, 548 (7th Cir. 1994) (where dismissal order incorporates some terms of settlement and not others, court has ancillary jurisdiction to enforce only those in the order;

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[29] A party absolved of liability in a prior action, and thus not subject to the money judgment in that action, plainly should be treated as a stranger to the judgment in that action for purposes of any subsequent action attempting to impose liability on that party. *Argento v. Village of Melrose Park*, 838 F.2d 1483, 1488 n.7 (7th Cir. 1988); *Skevofilax v. Quigley*, 810 F.2d 378, 384-85 (3d Cir. 1987) (*en banc*); *Berry*, 795 F.2d at 455 n.2.

violation of terms "*not* in the judgment cannot be thought to flout the court's order"); *Cooperative Transit Co. v. West Penn Elec. Co.*, 132 F.2d 720, 723-24 (4th Cir. 1943) (The "instant proceeding is not merely one to set aside or construe a decree." It "contains matter not before litigated by the same parties standing in the same interests," and is therefore "not ancillary.").

Here, the order was that Tru-Tech pay the judgment amount to respondent. The mere fact that the judgment turned out to be uncollectible does not entitle respondent to additional time in federal court to search for a more solvent defendant. This action does not seek to protect the integrity of the federal court's proceedings or its judgment; it seeks to protect the *holders* of that judgment. If the underlying statute does not give that remedy, however, there is no basis for the courts to supply it.

Finally, the availability of a state forum to try matters such as this one makes it even clearer that federal court jurisdiction over an action like this one is not "necessary." *Compare Julian v. Central Trust Co.*, 193 U.S. 93, 109-12 (1904) (resort to federal forum appropriate where federal court had retained jurisdiction and pending state court action would defeat its jurisdiction); *cf. Owen*, 437 U.S. at 376 ("ancillary jurisdiction typically involves claims by a defending party haled into court against his will, or by another person whose rights might be irretrievably lost unless he could assert them *in an ongoing action in a federal court*" (emphasis added)). There would not even have been an efficiency loss in committing this action to state court. The district court (in the person of a different judge from the one who presided over *Tru-Tech*) could not resolve this matter on the old record; a new trial was required, which could equally well have been conducted in state court.

The instant action was a new lawsuit with a new caption, begun with a new summons and complaint, with new service of process, and involving new theories of recovery, filed

against a party absolved of liability by the previous suit, which had already run its course on appeal. Such an independent action requires an independent source of federal jurisdiction.[30]

C. Congress Did Not Provide in ERISA for Federal Jurisdiction Over a Claim Such as This One. It Follows That Ancillary Jurisdiction Over This Claim Is Not "Necessary" to a Court's Functioning in the Context of ERISA.

ERISA is a comprehensive statute containing its own grant of federal jurisdiction. We have shown that ERISA makes no provision for maintenance of an action like this one, and indeed that its preemption provision leaves intact whatever state law claims respondent might have for the acts of which he complains. Congress did not deem it necessary for purposes of ERISA that an action such as this one be tried in federal court.[31]

Whatever the scope of ancillary jurisdiction in other contexts, it should not be used here to create a remedy that Congress did not see fit to provide in ERISA. Congressional action is extremely relevant to the scope of subject matter jurisdiction in general, and hence in this case to the determination of the breadth of subject matter jurisdiction that is "necessary" to the court's functions. *See*

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[30] *Berry*, 795 F.2d at 455 ("We can find no case where a court held that it had ancillary jurisdiction to consider claims in a *new and independent action* merely because the second action sought to satisfy or give additional meaning to an earlier judgment."); *Sederquist v. Court*, 861 F.2d 554, 558 (9th Cir. 1988) (ancillary jurisdiction will not extend to "a separate case against different defendants"); *Redding Ford v. California State Bd. of Equalization*, 722 F.2d 496, 498 (9th Cir. 1983) (same).

[31] Congress could, of course, have provided for federal jurisdiction simply by creating an ERISA cause of action to pierce the veil of any ERISA judgment debtor. *Cf. Carden v. Arkoma Associates*, 494 U.S. 185, 196-97 (1990) (leaving adjustments of diversity jurisdiction to Congress).

Owen, 437 U.S. at 373 (requiring reference to statutory scheme, and not just constitutional limits, in defining jurisdiction); *Aldinger v. Howard*, 427 U.S. 1, 17 (1976) (pendent "jurisdiction should be construed in light of the scope of the cause of action as to which federal judicial power *has* been extended by Congress"); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 47 (1991) ("exercise of the inherent power of lower federal courts can be limited by statute and rule"); *see also Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 510 (1874) (court's inherent power to punish for contempts is "essential to the preservation of order in judicial proceedings," but "the power has been limited and defined" by congressional action). These principles are inconsistent with an expansive use of ancillary jurisdiction to reach new cases omitted from the statutory framework by Congress.

Congress has indicated clearly what remedies, and what jurisdictional reach, are necessary to serve the goals of ERISA. These congressional judgments suggest strongly that the federal courts' power is not rendered incomplete by their inability to entertain actions such as this one, designed to expand the remedies available under ERISA. Accordingly, such actions are not "necessary."

D. Prudential Limits Counsel Against the Exercise of Ancillary Jurisdiction Here.

Assuming *arguendo* that the Article III judicial power could in theory be stretched to reach a proceeding of this kind, that would not be the end of the matter. As this Court has recognized in such areas as standing and ripeness, it has discretion to set prudential limits on the exercise of jurisdiction. *See, e.g., Reno v. Catholic Soc. Servs., Inc.*, 113 S. Ct. 2485, 2495 n.18 (1993) (ripeness); *Nordlinger v. Hahn*, 505 U.S. 1, 17 (1992) (standing); *Wyoming v. Oklahoma*, 502 U.S 437, 450 (1992) ("we have imposed prudential and equitable limitations upon the exercise of our original jurisdiction"). Such

prudential limits are particularly appropriate to judicially created doctrines such as necessary ancillary jurisdiction.

Prudential considerations strongly counsel reversal here. The fundamental rationale of the Fourth Circuit was that a federal judgment confers federal jurisdiction over additional lawsuits that seek to identify *any* potentially responsible parties, and not just those already expressly adjudged liable. One can envision a wide variety of circumstances in which a judgment creditor from a federal question lawsuit (from antitrust to RICO to securities law) might seek to expand the pool of potentially responsible parties. Under the Fourth Circuit's rule, *any* such suit, proceeding on *any* legal theory of vicarious liability or asset tracing, would be ancillary to the prior federal suit because the second suit would seek to determine who is responsible for the judgment. This rule would open the federal courts to all manner of collection actions, which would have to proceed under state-law theories [32] or (as happened here) judge-made versions of the same theories that would have to be invented for each state-law theory. Moreover, depending upon the perceived purpose of the federal statute giving rise to the original judgment, the federal common law as to a given collection theory might well vary from one statute to the next. None of this is necessary to the functioning of the federal courts, nor is it consistent with the limits of Article III or sound principles of judicial administration. Ancillary jurisdiction does not give a successful plaintiff a permanent ticket of entry to the federal courts.

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[32] The Fourth Circuit's rationale could not be limited to veil piercing. It would extend, for example, from contribution and fraudulent conveyance issues to state statutory bases for liability, respondeat superior or other scope of employment doctrines, and construction of insurance contracts. *Argento*, 838 F.2d at 1502 (dissent) (opposing ancillary jurisdiction and identifying state issues thrust thereby into federal court).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX A

§ 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violation or (ii) to enforce any provision of this subchapter;

(6) by the Secretary to collect any civil penalty under subsection (c)(2) or (i) or (*l*) of this section;

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 1169 (a)(2)(A) of this title); or

(8) by the Secretary, or by an employer or other person referred to in section 1021(f)(1) of this title, (A) to enjoin any act or practice which violates subsection (f) of section 1021 of this title, or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection.